



Billing Code 4210-67

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5630-N-05]

Rental Assistance Demonstration: Final Program Notice

AGENCY: Office of the Assistant Secretary for Public and Indian Housing and Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: On July 26, 2012, HUD announced through notice in the Federal Register the final implementation of the statutorily authorized Rental Assistance Demonstration (RAD), which has two conversion components. RAD provides the opportunity to test the conversion of public housing and other HUD-assisted properties to long-term, project-based Section 8 rental assistance to achieve certain goals, including the preservation and improvement of these properties through access by public housing agencies (PHAs) and owners to private debt and equity to address immediate and long-term capital needs. RAD is also designed to test the extent to which residents have increased housing choices after the conversion, and the overall impact on the subject properties. The July 26, 2012 notice provided for full implementation of RAD, and the posting of the Final Program Notice (Final Program Notice, PIH-2012-32) on HUD's RAD website on. This Federal Register notice published today announces revisions to the Demonstration and solicits public comment on eligibility and selection criteria. It also announces the posting of the Revised Final Program Notice (Revised Final program Notice, PIH-2012-32, REV-1). As provided by the RAD statute, this notice addresses the requirement that the demonstration may proceed after publication of notice of its terms in the Federal Register. This Notice summarizes the key changes made to the Program Notice (PIH 2012-32) issued on July

26, 2012. This notice also meets the RAD statutory requirement to publish waivers and alternative requirements authorized by the statute at least 10 days before they may take effect, which does not prevent the demonstration from proceeding immediately.

DATES: Comment Due Date: **[Insert date 30 days after date of publication in the FEDERAL REGISTER]**. Interested persons are invited to submit comments electronically to rad@hud.gov no later than the comment due date.

Effective Dates: Sections I-IV of this notice, and section II of the appendix to this notice, are effective **[Insert date of publication in the FEDERAL REGISTER]**, for the exception of those items listed as subject to Notice and Comment, which shall be subject to a 30-day comment period that commences upon publication of this notice. Unless HUD receives comment that would lead to the reconsideration of any of the indicated changes in eligibility and selection criteria, those changes subject to notice and comment shall become immediately effective upon **[Insert date 30 days after date of publication in the FEDERAL REGISTER]**. If HUD receives adverse comment that leads to reconsideration, HUD shall notify the public in a new revision immediately upon the expiration of the comment period.

The Final Program Notice, PIH-2012-32, REV-1, except for new statutory and regulatory waivers specified in section I of the appendix to this notice, is effective **[Insert date of publication in the FEDERAL REGISTER]**

The new statutory and regulatory waivers in section I of the appendix to this notice are effective **[Insert date that is 10 days after date of publication in the Federal Register.]**

The conversion of Rent Supp and RAP properties under Section III of the Program Notice, which is updated by PIH-2012-32, REV-1, was effective on March 8, 2012.

FOR FURTHER INFORMATION CONTACT: To assure a timely response, please electronically direct requests for further information to this email address: rad@hud.gov. Written requests may also be directed to the following address: Office of Public and Indian Housing—RAD Program, Department of Housing and Urban Development, 451 7th Street, SW, Room 2000; Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

I. Background

RAD, authorized by the Consolidated and Further Continuing Appropriations Act, 2012, (Public Law 112-55, signed November 18, 2011) (2012 Appropriations Act) allows for the conversion of assistance under the public housing, Rent Supplement (Rent Supp), Rental Assistance (RAP), and Moderate Rehabilitation (Mod Rehab) programs (collectively, “covered programs”) to long-term, renewable assistance under Section 8. As provided in the Federal Register notice that HUD published on March 8, 2012, at 77 FR 14029, RAD has two separate components:

First Component. The first or competitive component of RAD allows projects funded under the public housing and Mod Rehab programs to convert to long-term Section 8 rental assistance contracts. Under this component of RAD, which is covered under Sections I and II of the Final Program Notice, PHAs and Mod Rehab owners may apply to HUD to convert to one of two forms of Section 8 Housing Assistance Payment (HAP) contracts: project-based vouchers (PBVs) or project-based rental assistance (PBRA). No additional or incremental funds were authorized for this component of RAD. Therefore, PHAs and Mod Rehab owners will be required to convert assistance for projects at current subsidy levels. The 2012 Appropriations Act authorizes up to 60,000 units to convert assistance under this component, to be selected

competitively. The 2012 Appropriations Act further specifies that HUD shall provide an opportunity for public comment on draft eligibility and selection criteria and on the procedures that will apply to the selection of properties that will participate in this component of the demonstration. This opportunity for comment was provided by the March 8, 2012, notice.

The First Component became effective July 26, 2012. The initial application period for this component opened on September 24, 2012. The ongoing application period for this component opened on October 24, 2012 and is currently open. .

Second Component. The second component of RAD, which is covered under Sections II and III of the Final Program Notice, allows owners of projects funded under the Rent Supp, RAP and Mod Rehab programs with a contract expiration or termination due to prepayment occurring after October 1, 2006, and no later than September 30, 2013, to convert tenant protection vouchers (TPVs) to PBVs. There is no cap on the number of units that may be converted under this component of RAD and no requirement for competitive selection. While these conversions are not necessarily subject to current funding levels for each project or a unit cap similar to public housing conversions, the rents will be subject to rent reasonableness under the PBV program and are subject to the availability of overall appropriated amounts for TPVs.

The Second Component was effective on March 8, 2012, in Program Notice PIH 2012-18 published on the RAD website (www.hud.gov/rad), and is amended in part by the Revised Final Program Notice, PIH-2012-32, REV-1, also published on the RAD website. Applications for conversion of assistance may be submitted immediately.

Waivers and Alternative Requirements. The RAD statute provides that waivers and alternative requirements authorized under the first component shall be published by notice in the Federal Register no later than 10 days before the effective date of such notice. This notice

carries out that statutory requirement. Under the second component of RAD, HUD is authorized to waive or alter the provisions of subparagraphs (C) and (D) of section 8(o)(13) of the United States Housing Act of 1937. Although waivers under the second component are not subject to a Federal Register publication requirement, the second component waivers are included in this notice as a matter of convenience. This list of these waivers and alternative requirements are in the appendix of this notice.

II. Key Changes Made to HUD's Proposed RAD Demonstration

The following highlights key changes made to the Program Notice, PIH 2012-32, issued on July 26, 2012:

First Component

1. Providing RAD awards for projects requiring multi-phased development to facilitate the assembly of financing (see Section 1.9.E). [Subject to 30-day Notice & Comment]
2. Allowing a PHA to apply for a Portfolio Award for a set of projects, wherein HUD will reserve RAD conversion authority for all projects contained in the portfolio, provided the PHA submits individual completed RAD Applications for at least 50% of the projects. The PHA then has 365 days to submit a completed application for each of the remaining projects (see Section 1.9.F, Attachment 1C). [Subject to 30-day Notice & Comment]
3. Providing contract rents at FY 2012 rent levels (as posted in the RAD Application) for all applications submitted prior to the end of CY 2013. This provision facilitates conversion of a public housing project, a multi-phase project, or a PHA-defined portfolio of projects by providing assurances to lenders and PHAs about contract rents to be established at the time of conversion (see Section 1.6.B.5; Section 1.7.A.5, Attachment 1C).

4. Allowing PHAs to adjust subsidy (and initial contract rents) across multiple projects to facilitate financing. The combined subsidy for these “bundled” projects may not exceed the aggregate funding for all of the projects the PHA is proposing to bundle (see Section 1.6.B.5; Section 1.7.A.5, and Section 1.9.D).
5. Allowing Moving to Work (MTW) agencies who are applying for two or more projects to use their MTW block grant flexibility to set initial contract rents, subject to RAD rent caps and continued service requirements (see Section 1.6.B.5, Section 1.7.A.5, and Section 1.9.D).
6. Expanding eligibility of HOPE VI projects (see Section 1.11.C.2.c). [Subject to 30-day Notice & Comment]
7. Eliminating the caps on awards to PHAs and to Mixed-Finance projects (see Section 1.11.C.2.c).
8. Exempting awarded public housing projects from scoring under the Public Housing Assessment System (PHAS) to support redevelopment planning and need for temporary relocation during construction (see Section 1.5.I).
9. Allowing PHA’s to use the Choice Neighborhoods Implementation (CNI) Notice of Funding Availability (NOFA) to apply for Joint RAD/CNI Awards (see Section 1.11.C.2.c). [Subject to 30-day Notice & Comment]
10. Opening the Mod Rehab Ongoing Application Period under the First Component and removing the cap on Mod Rehab Projects applying under the First Component (see Section 2.2.10). [Subject to 30-day Notice & Comment]

11. Allowing a Mod Rehab owner to request a Portfolio Award for a grouping of projects, wherein HUD will reserve RAD conversion authority for all projects contained in the grouping, provided the owner submits a completed application for at least 50% of the projects. The owner then has 365 days to submit a completed application for the remaining projects (see Section 2.2.8.C). [Subject to 30-day Notice & Comment]
12. Providing RAD awards for projects requiring multi-phased development to facilitate the assembly of financing (see Section 2.2.8.D). [Subject to 30-day Notice & Comment]

III. The Final Program Notice and Responses to Public Comments

The Revised Final Program Notice for RAD, PIH-2012-32, REV-1, can be found at www.hud.gov/rad. Also posted on HUD's RAD website is a summary of the public comments received in response to the March 8, 2012 notice and HUD's responses to the comments. The RAD website will also post a summary of the public comments received in response to the publication of the revised Final Program Notice following the expiration of the 30 day comment period commencing on effective **[Insert date of publication in the FEDERAL REGISTER]**.

IV. Environmental Review

A Finding of No Significant Impact with respect to the environment was made in connection with the Program Notice issued on March 8, 2012, and in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding remains applicable to the Final Program Notice and is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339.

Dated: June 26, 2013

Sandra B. Henriquez, Assistant Secretary
for Public and Indian Housing

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for Public and Indian Housing

[FR-5630-N-05]

APPENDIX – RAD WAIVERS AND ALTERNATIVE REQUIREMENTS

The RAD statute provides that waivers and alternative requirements authorized under the first component shall be published by notice in the Federal Register no later than 10 days before the effective date of such notice. This appendix carries out that statutory requirement. Under the second component of RAD, HUD is authorized to waive or alter the provisions of subparagraphs (C) and (D) of section 8(o)(13) of the United States Housing Act of 1937. Although waivers under the second component are not subject to a Federal Register publication requirement, the second component waivers are included in this appendix as a matter of convenience.

Additionally, the RAD statute imposes certain requirements that must be followed under the demonstration, such as requiring long-term renewable use and affordability restrictions for assisted units in properties that convert from assistance under section 9. The RAD statute also authorizes HUD to establish requirements for converted assistance under the demonstration. HUD has used this authority, for example, by establishing in the Final Notice the requirements of 24 CFR part 880, with modifications appropriate for the converted assistance under the demonstration. These types of requirements are not subject to the publication requirement applicable to the waiver and alternative requirements listed in this appendix.

On July 26, 2012, HUD published by notice a list of RAD waivers and alternative requirements. That list, which became effective August 6, 2012, is still in effect and will not be reproduced here. Provided below, will be a list of new waivers and alternative requirements that shall come into effect on **[Insert date that is 10 days after date of publication in the Federal Register.]**.

The list of waivers and alternative requirements, as described above, follows:

I. Public Housing Conversions

A. Changes to Requirements for Public Housing

Use of Public Housing Funds. *Provision affected:* Section 9 of the United States Housing Act of 1937 (42 USC 1437g). *Alternative requirements:* PHAs are required under the Demonstration to use available public housing funding, including remaining Operating Funds and remaining Capital Funds to fund the Housing Assistance Payments Contracts during the initial calendar year of conversion, including the provision of RAD Rehab Assistance Payments.

Section 33 Required Conversion Assessment. *Provisions affected:* Section 33 of the United States Housing Act of 1937 (42 USC 1437z-5); 24 CFR part 972, subpart A. *Alternative requirements:* PHAs will not be required to assess projects that have been issued a CHAP or are covered by a Portfolio or Multi-phase Award because HUD considers the RAD conversion process to fulfill the requirements of Section 33 of the Act. Accordingly, HUD is waiving 24 CFR part 972, subpart A for projects covered by a CHAP, a Portfolio Award, or a Multi-phase Award.

Public Housing Assessment System. *Provisions affected:* 24 CFR part 902, subpart A. *Alternative Requirements:* Upon issuance of a CHAP, all public housing units covered by the CHAP shall not be issued scores for the fiscal year in which the CHAP was issued, nor any subsequent fiscal year until such time as conversion, at which point the units shall be subject to applicable Section 8 program requirements. If HUD revokes the CHAP, HUD reserves the right to reassess and rescore all PHAS indicators and issue a new PHAS score and designation for all fiscal years concerning these units covered by the CHAP.

Resident Opportunities and Self Sufficiency Service Coordinators (ROSS-SC) and Public Housing Family Self-Sufficiency. *Provisions affected:* Section 23 of the United States Housing

Act of 1937 (42 USC 1437u); Section 34 of the United States Housing Act of 1937 (42 USC 1437z-6); 24 CFR 984.303(b)(5)(iii). *Alternative requirement:* None, The provisions are waived.

B. Changes to PBV Requirements for Public Housing Conversions

Maximum Amount of PBV Assistance. *Provisions affected:* Section 3(a)(1) of the United States Housing Act of 1937 (42 USC 1437a(a)(1)); 24 CFR 983.3. *Alternative Requirements:* If a tenant's monthly rent increases by more than the greater of 10 percent or \$25 purely as a result of conversion, the rent increase will be phased in over 3 or 5 years. To implement this provision, HUD is waiving section 3(a)(1) of the Act, as well as 24 CFR 983.3 (definition of "total tenant payment" (TTP)) only to the extent necessary to allow for the phase-in of tenant rent increases. A PHA must create a policy setting the length of the phase in period at three years, five years or a combination depending on circumstances (For example, a PHA may create a policy that uses a three year phase-in for smaller increases in rent and a five year phase-in for larger increases in rent. This policy must be in place at conversion and may not be modified after conversion).

The below method explains the set percentage-based phase-in an owner must follow according to the phase-in period established. For purposes of this section "standard TTP" refers to the TTP calculated in accordance with regulations at 24 CFR 5.628 and the "most recently paid TTP" refers to the TTP recorded on line 9j of the family's most recent HUD Form 50058

Three Year Phase-in:

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 33% of difference between most recently paid TTP and the standard TTP
- Year 2: Year 2 Annual Recertification (AR) and any Interim Recertification (IR) prior to Year 3 AR – 66% of difference between most recently paid TTP and the standard TTP

- Year 3: Year 3 AR and all subsequent recertifications – Full standard TTP

Five Year Phase in:

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 20% of difference between most recently paid TTP and the standard TTP
- Year 2: Year 2 AR and any IR prior to Year 3 AR – 40% of difference between most recently paid TTP and the standard TTP
- Year 3: Year 3 AR and any IR prior to Year 4 AR – 60% of difference between most recently paid TTP and the standard TTP
- Year 4: Year 4 AR and any IR prior to Year 5 AR – 80% of difference between most recently paid TTP and the standard TTP
- Year 5 AR and all subsequent recertifications – Full standard TTP

Please Note: In either the three year phase-in or the five-year phase-in, once the standard TTP is equal to or less than the previous TTP, the phase-in ends and tenants will pay full TTP from that point forward.

Housing Choice Voucher Earned Income Disregard. *Provisions affected:* 24 CFR

5.617(b). *Alternative Requirements:* Under the Housing Choice Voucher program, the EID exclusion is limited to only persons with disabilities (24 CFR 5.617(b)). In order to allow all tenants (including non-disabled persons) who are currently within the 48 month EID eligibility period at the time of conversion to continue to benefit from this exclusion in the PBV project, the provision in 24 CFR 5.617(b) limiting EID to only disabled persons is waived. The waiver and resulting alternative requirement only applies to tenants who are currently within the 48 month

EID eligibility period at the time of conversion. No other tenant (e.g., tenants that move into the property following conversion, etc.) is covered by this waiver.

Administrative Fees for Public Housing Conversions. *Provisions affected:* Section 8(q) of the United States Housing Act of 1937 (42 USC 1437f(q)) and related appropriations act provisions in effect immediately before the Quality Housing and Responsibility Act of 1998; 24 CFR 982.152(b). *Alternative Requirements:* For the initial Calendar Year in which a project's assistance has been converted, RAD PBV projects will be funded with public housing money. Since the public housing funding will not have been transferred to the TBRA account and since this funding is not section 8 assistance the annual contributions contract (ACC) between the PHA and HUD will cover the project units, but be for zero dollars. For this transition period, the ACC will primarily serve as the basis for covering the units and requiring PHA compliance with HUD requirements, but it will not be (as it is in the regular PBV program) the funding vehicle for the PBV RAD vouchers. Given this, and given the fact that PHAs will be receiving full public housing funding for the PBV units during this transition period, PHAs will not receive ongoing section 8 administrative fee funding during this time.

Generally, PHAs receive ongoing administrative fees for units under a HAP contract, consistent with recent appropriation act references to "section 8(q) of the [United States Housing Act of 1937] and related appropriations act provisions in effect immediately before the Quality Housing and Responsibility Act of 1998" and 24 CFR 982.152(b). During the transition period mentioned in the preceding paragraph, these provisions are waived, and PHAs will not receive section 8 ongoing administrative fees for PBV RAD units.

After this transition period, the ACC will be amended to include section 8 funding that corresponds to the units covered by the ACC. At that time, the regular section 8 administrative fee funding provisions will apply.

C. Changes to Project-Based Rental Assistance (PBRA) Requirements for Public Housing Conversions

Classification of Converting Projects as Pre-1981 Act Projects. Provision affected: Section 16(c)(2) of the United States Housing Act of 1937 (42 USC 1437(n)(c)(2)); 24 CFR 5.653(d)(2). Alternative Requirements: For purposes of ensuring maximum flexibility in converting to PBRA, all such projects converting to PBRA shall be treated as Pre-1981 Act Projects under Section 16(c) of the United States Housing Act of 1937. Section 16(c)(1) of the U.S. Housing Act of 1937, which applies to pre-1981 Act projects, restricts occupancy by families that are other than very low-income to 25% of overall occupancy. Thus, owners of projects converting to PBRA may admit applicants with incomes up to the low-income limit. HUD Headquarters tracks the 25% restriction on a nationwide basis. Owners of projects converting to PBRA do not need to request an exception to admit low-income families. In order to implement this provision, HUD is waiving section 16(c)(2) of the United States Housing Act of 1937 and 24 CFR 5.653(d)(2) and is instituting an alternative requirement that owners of projects converting to PBRA adhere to the requirements of section 16(c)(1) of the United States Housing Act of 1937 and 24 CFR 5.653(d)(1).

Phase-in of Tenant Rent Increases. *Provision affected:* Section 3(a)(1) of the United States Housing Act of 1937 (42 USC 1437a(a)(1)); 24 CFR 880.201. *Alternative Requirements:* If a resident's monthly rent increases by more than the greater of 10 percent or \$25 purely as a result of conversion, the rent increase will be phased in over 3 years, which a PHA may extend to

5 years. To implement this provision, HUD is waiving section 3(a)(1) of the Act, as well as 24 CFR 880.201 (definition of “total tenant payment”), to the limited extent necessary to allow for the phase-in of tenant rent increases. A PHA must set the length of the phase-in period to be three years, five years or a combination depending on circumstances (For example, a PHA may create a policy that uses a three year phase-in for smaller increases in rent and a five year phase-in for larger increases in rent. This policy must be in place at conversion and may not be modified after conversion.

The below method explains the set percentage-based phase-in an owner must follow according to the phase-in period established. For purposes of this section “Calculated Multifamily TTP” refers to the TTP calculated in accordance with regulations at 24 CFR 5.628 and the “most recently paid TTP” refers to the TTP recorded on the family’s most recent HUD Form 50059.

Three Year Phase-in:

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 33% of difference between most recently paid Total Tenant Payments (TTP) and the calculated Multifamily housing TTP
- Year 2: Year 2 Annual Recertification (AR) and any Interim Recertification (IR) in prior to Year 3 AR – 66% of difference between most recently paid TTP and calculated Multifamily housing TTP
- Year 3: Year 3 AR and all subsequent recertifications – Year 3 AR and any IR in Year 3: Full Multifamily housing TTP

Five Year Phase-in

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 20% of difference between most recently paid TTP and the calculated Multifamily housing TTP
- Year 2: Year 2 AR and any IR prior to Year 3 AR – 40% of difference between most recently paid TTP and calculated Multifamily housing TTP
- Year 3: Year 3 AR and any IR prior to Year 4 AR – 60% of difference between most recently paid TTP and calculated Multifamily housing TTP
- Year 4: Year 4 AR and any IR prior to Year 5 AR – 80% of difference between most recently paid TTP and calculated Multifamily housing TTP
- Year 5 AR and all subsequent recertifications – Full Multifamily housing TTP

Please Note: In either the three year phase-in or the five-year phase-in, once Multifamily housing TTP is equal to or less than the previous TTP, the phase-in ends and tenants will pay full multifamily housing TTP from that point forward.

Calculation of Tenant Rent. *Provision affected:* 24 CFR 5.628. *Alternative Requirements:* Tenants who are employed and are currently receiving the EID exclusion at the time of conversion will continue to receive the EID exclusion after conversion, in accordance with regulations at 24 CFR 960.255. After conversion, no other tenants will be eligible to receive the EID. If a tenant receiving the EID exclusion undergoes a break in employment, ceases to use the EID exclusion, or the EID exclusion expires in accordance with 24 CFR 960.255, the tenant will no longer receive the EID exclusion and the Owner will no longer be subject to the provisions of 24 CFR 960.255. Furthermore, tenants whose EID ceases or expires after conversion shall not be subject to the rent phase-in provision, as described in Section 1.7.B.3; instead, the rent will automatically be adjusted to the appropriate rent level based upon tenant income at that time.

RAD Rehab Assistance Payments. *Provision affected:* 24 CFR 880.504(a). *Alternative Requirement:* Units that are not occupied and will be undergoing rehabilitation or construction as identified in the approved Financing Plan and RAD Conversion Commitment will be eligible for assistance equal to the Public Housing Operating Fund and the Capital Fund amounts that formed the basis for the calculation of initial contract rents (see Attachment 1C). During the period of rehabilitation or construction as identified in the approved Financing Plan and RCC, the maximum RAD Rehab Assistance a PHA may receive (i.e. for occupied units, units eligible for vacancy payments, or units eligible for Rehab Assistance Payments) is limited to the number of units eligible for Operating Fund subsidy prior to conversion. As a result, not all units included in the converting property will be eligible for rehab assistance payments. As necessary to implement this provision, HUD is waiving the applicability of additional provisions in section 8 of the Act and 24 CFR part 983 and instituting an alternative requirement.

Following the earlier of (1) the end of the construction period determined within the HUD-approved Financing Plan or (2) the end of actual construction, the PHA will no longer be eligible to receive RAD Rehab Assistance Payments and all units under contract will be eligible for payment only for occupied units or for vacancy payments, as applicable.

II. Changes to PBV Requirements for Mod Rehab Conversions (Noncompetitive)

Under-occupied Units. *Provision affected:* HUD is waiving 24 CFR 983.259(b)(1); 24 CFR 983.259(b)(2) and 24 CFR 983.259(c). *Alternative Requirements:* For households of more than two individuals (or single-person households, where that individual is elderly or disabled,) occupying a unit determined by HUD regulations to be under-occupied, shall upon conversion to PBV, be allowed to remain in those units until such time as an appropriate-size unit becomes available. When an appropriate size unit becomes available in the project, the family living in the

oversized unit must move to the appropriate size unit within a reasonable time, as determined by the PHA. If the unit size required by the family does not physically exist at the project, the family shall remain in its current unit unless and until a more appropriate size unit is available. If or when a smaller size unit becomes available, the family must move to the smaller size unit.

For households consisting of single individuals who are not elderly or disabled, the unit shall not be included in the PBV HAP contract. The PHA shall provide an enhanced voucher to such individuals who have the statutory right to remain in the project (see PIH Notice 2001-41 for enhanced voucher requirements and PIH Notice 2008-12 for guidance on enhanced voucher requirements for overhoused households). If the tenant moves with tenant-based voucher assistance, the unit is not eligible for conversion under RAD since the funding to support the converted unit is no longer available.

Rent Determination. *Provisions affected:* 24 CFR 983.301(e); 24 CFR 983.302(c); and 24 CFR 983.303(a). *Alternative Requirements:* Initial and re-determined rents for PBV contracts are determined by the PHA. Such rents cannot exceed the lowest of: (i) an amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent (or any exception payment standard approved by the Secretary) for the unit bedroom size minus any utility allowance; (ii) the reasonable rent; or (iii) the rent requested by the owner. (See 24 CFR part 983, subpart G, for program requirements on establishing PBV rents). Re-determined rents may result in a downward adjustment in certain circumstances (e.g. rent is no longer reasonable). For purposes of RAD, PHAs may elect, in the HAP contract, to establish the initial contract rent as the rent floor. PHAs should consider their individual markets, number of families served, annual budget authority and factors that may influence funding amounts and any other local concerns prior to electing to establish the initial contract rent as the rent floor. If the PHA has elected within the

HAP contract to not reduce rents below the initial rent to owner, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial PBV HAP contract, except:

- To correct errors in calculations in accordance with HUD requirements;
- If additional housing assistance has been combined with PBV assistance after the execution of the initial PBV HAP contract and a rent decrease is required pursuant to 24 CFR 983.55; or
- If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

III. Rent Supplement and Rental Assistance Payment Project Conversions

Under-occupied Units. *Provision affected:* HUD is waiving 24 CFR 983.259(b)(1); 24 CFR 983.259(b)(2) and 24 CFR 983.259(c). *Alternative Requirements:* Under-occupied Units Converting to PBV. For households of more than two individuals (or single-person households, where that individual is elderly or disabled,) occupying a unit determined by HUD regulations to be under-occupied, shall upon conversion to PBV, be allowed to remain in those units until such time as an appropriate-sized unit becomes available. When an appropriate size unit becomes available in the project, the family living in the oversized unit must move to the appropriate size unit within a reasonable time, as determined by the PHA. If the unit size required by the family does not physically exist at the project, the family shall remain in its current unit unless and until a more appropriate size unit is available. If or when a smaller size unit becomes available, the family must move to the smaller size unit. To effectuate this new alternative requirement, HUD is waiving 24 CFR 983.259(b)(1)(2) and (c).

For households consisting of single individuals who are not elderly or disabled, the unit shall not be included in the PBV HAP contract. The household member shall be provided a tenant protection voucher and may choose to move with such voucher or enter into a tenant-based tenancy with the owner provided the unit is eligible under the tenant-based voucher program; or if a qualifying mortgage pre-payment would trigger the provision of enhanced vouchers, the tenant has the statutory right to remain in the project (see PIH Notice 2001-41 for enhanced voucher requirements and PIH Notice 2008-12 for guidance on enhanced voucher requirements for overhoused households). In either case, if the tenant moves with tenant-based voucher assistance, the unit is not eligible for conversion under RAD since the funding to support the converted unit is no longer available under RAD since the funding to support the converted unit is no longer available.

Rent Determination. *Provisions affected:* 24 CFR 983.301(e); 24 CFR 983.302(c); and 24 CFR 983.303(a). *Alternative Requirements:* Initial and Re-Determined Rents. Initial and re-determined rents for PBV contracts are determined by the PHA. Such rents generally cannot exceed the lowest of: (i) an amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent (or any exception payment standard approved by the Secretary) for the unit bedroom size minus any utility allowance; (ii) the reasonable rent; or (iii) the rent requested by the owner. (See 24 CFR part 983, subpart G, for program requirements on establishing PBV rents). Re-determined rents may result in a downward adjustment in certain circumstances (e.g. rent is no longer reasonable). For purposes of RAD, PHAs may elect, in the HAP contract, to establish the initial contract rent as the rent floor. PHAs should consider their individual markets, number of families served, annual budget authority and factors that may influence funding amounts, and any other local concerns prior to electing to establish the initial

contract rent as the rent floor. If the PHA has elected within the HAP contract to not reduce rents below the initial rent to owner, the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial PBV HAP contract, except:

- To correct errors in calculations in accordance with HUD requirements;
- If additional housing assistance has been combined with PBV assistance after the execution of the initial PBV HAP contract and a rent decrease is required pursuant to 24 CFR 983.55; or
- If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.
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- [FR Doc. 2013-15900 Filed 07/01/2013 at 8:45 am; Publication Date: 07/02/2013]